



Tracey M. Slagle
YAKIMA COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY

MICHAEL SCOTT BRUMBACK, an individual; and GIMME GUNS, a sole proprietorship

Plaintiffs,

vs.

ROBERT W. FERGUSON, in his official capacity as Washington State Attorney General; JOHN R. BATISTE, in his official capacity as Chief of the Washington State Patrol; ROBERT UDELL, in his official capacity as Sheriff for Yakima County, Washington; and JOSEPH A. BRUSIC, in his official capacity as County Prosecutor for Yakima County.

Defendants.

Case No.: *22-1-01446-39*

DECLARATION OF MICHAEL SCOTT BRUMBACK IN SUPPORT OF PLAINTIFFS' MOTION FOR INJUNCTIVE AND DECLARATORY RELIEF

I, Michael Scott Brumback, make the following statements from my own personal knowledge under penalty of perjury of the laws of the State of Washington:

1. I am 60 years of age. I am a United States citizen and have been since birth. I have not been convicted of any crimes. I have a natural and constitutionally-protected right to own, possess, keep and bear arms under the WA and US Constitutions. This

1 right is to be free of unwarranted government impairment, infringement, degradation
2 and/or harassment.

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5 2. I am a husband, father, business owner and US taxpayer. I legally own firearms such
6 as handguns (revolvers and semi-auto), shotguns (pump and semi-auto), bolt action
7 rifles, and semi-automatic rifles. I am licensed to conceal carry firearms by the states
8 of Washington, Oregon and Utah.

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11 3. I am a life member of the Veterans of Foreign Wars, a life member of the American
12 Legion, a life member of the National Rifle Association, a life member of the Second
13 Amendment Foundation and a member of the Sons of the American Revolution.

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15 4. I have taken oaths to the Washington and US Constitutions. I am familiar with the
16 meaning, import and duties associated with these oaths. My first oath to the US
17 Constitution was during my enlistment in the US Army on August 15, 1979. I took
18 another oath to the US and Washington Constitutions when I enlisted with the
19 Washington Army National Guard in February of 1992.

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23 5. I was sworn in as a commissioned US Army Reserve officer in 1997 and took an oath
24 to the US Constitution as part of my commissioning. I served as a commissioned
25 Judge Advocate General (JAG) officer for 20 years. I retired honorably as a Major in
26 2017. My combined enlisted and commissioned officer service totaled just over 30
27 years. My service took me to several OCONUS and CONUS duty stations.
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2 6. I have been licensed to practice law in the state of Washington since 1992. As part of
3 my admission to practice law in the State of Washington, I took and swore an oath to
4 the Washington and US Constitutions. I took similar oaths as a Yakima County
5 Deputy prosecutor (1994-1996), City of Yakima Assistant City Attorney (1996-1998)
6 and Judge *pro tempore* for Yakima County District Court. I am a member of the
7 Washington State Bar Association and the Washington State Association for Justice
8 (Eagle).
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12 7. The Washington State Constitution protects my individual right to bear arms in
13 defense of myself, my family, my community and the state of Washington.
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15 8. Our right to bear arms is protected by Article I, Section 24 of the Washington State
16 Constitution. Article I, Section 24 provides: **“Right to bear arms. The right of the**
17 **individual citizen to bear arms in defense of himself, or the state, shall not be**
18 **impaired....”**.
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21 9. All judges, justices and lawyers admitted to practice law or sit as a judicial officers in
22 the state of Washington swore an oath to the Washington Constitution, which, of
23 course, includes a solemn promise to support, defend and protect the right to bear
24 arms as found in Article I, section 24 of the Washington Constitution.
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1 10. To “impair” means to lessen to any appreciable degree. The Merriam-Webster
2 dictionary defines “impair” thusly: “to diminish in function, ability, or quality : to
3 weaken or make worse.”
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6 11. I was able to buy ammunition magazines over 10 rounds before July 1, 2022. As of
7 July 1, 2022, I cannot buy such magazines because the law changed and impaired
8 my right to bear arms. Government actors who attempt to impair and/or infringe
9 upon my right to bear arms are prohibited from taking such action by the “shall
10 not” language in Article I, Section 24 of the Washington and US Constitutions.
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13 12. Engrossed Senate Bill 5078 (“ESSB 5078” herein), amending RCW Chapter 9.41,
14 bans the sale, manufacturing, importing, and/or distributing of ammunition
15 magazines over 10 rounds. It was signed into law by Washington Governor Jay
16 Inslee on March 23, 2022. The effective date upon which this law took effect was
17 July 1, 2022.
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20 13. On June 30, 2022, I was able buy 30 round ammunition magazines in Washington.
21 On July 1, 2022, RCW Chapter 9.41, as amended by ESSB 5078 as signed into law
22 by Governor Jay Inslee in March of 2022, prohibited the sale, manufacture,
23 importation and/or distribution of said ammunition magazines. As a result, I was on
24 and after July 1, 2022 unable to purchase magazines capable of holding over 10
25 rounds of ammunition and can only buy 10 rounds (or less) ammunition magazines. I
26 already have 10 round or less magazines.
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2 14. My intent and desire is to buy 30 round ammunition magazines. It is my
3 constitutionally-protected right to purchase and procure ammunition magazines
4 capable of holding over 10 rounds.
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7 15. My right to bear arms has been harmed by the Washington legislature, Governor
8 Inslee, Attorney General Ferguson and all who facilitated the passage of ESSB 5078.
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11 16. The Washington Constitution provides that **“The provisions of this Constitution are**
12 **mandatory, unless by express words they are declared to be otherwise.”** The
13 Washington legislature, Governor Inslee, and AG Ferguson ignored this provision.
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15 17. A person, regardless of public office or social status, might be of the opinion that
16 ammunition magazines holding over 10 rounds should be banned or not allowed for
17 sale in Washington. Personal opinions are not law; they’re simply opinions.
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20 18. The US and WA Constitutions are law. They are “mandatory”. Law is not
21 personal opinion. It is not a mob’s desire. It is not a tyrant’s decrees.
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24 19. An individual possesses a natural, God-given, right to defend himself so as to
25 preserve his life and liberty and to protect his family. Every lawyer, judge, justice,
26 commissioner, police officer, trooper and elected public servant in Washington took
27 an oath to our Constitution to protect these God-given rights and liberties.
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2 20. The Preamble to the Washington Constitution tells us from where our rights and
3 liberties originate. The Preamble is the doorway to our Constitution; it colors and
4 gives life to the entire document.
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7 21. The Preamble to the Washington Constitution provides that: **“We, the people of the**
8 **State of Washington, grateful to the Supreme Ruler of the Universe for our**
9 **liberties, do ordain this constitution.”**
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12 22. Our liberties come from God, not man. You won’t hear this taught in law school for
13 that would undermine what it is that men with bad intent are doing with, and to, our
14 rights and liberties. If people believe our rights come from man, then man can take
15 such rights. But man may not take rights and liberties that God has given us. That
16 distinction is critical to understanding what our US and WA Constitutions mean.
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19 23. On July 1, 2022, I traveled to, and attempted to purchase a 30 round AR-15 rifle
20 magazine at, Bestway Pawn Mart, Inc., located at 22 South First Street, Yakima, WA
21 98901. The owner had advertised the sale of 30 round magazines the days, weeks
22 and months prior to July 1, 2022.
23

24 24. I was told by the owner/manager of Bestway Pawn Mart that, as of July 1, 2022, he
25 was not legally able to sell me a 30 round rifle magazine since such ammunition
26 magazines were no longer able to be sold legally in the state of Washington. I told
27 the owner of Bestway Pawn Mart that I had money and was there at Bestway Pawn
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1 Mart ready, willing and able to buy a 30 round ammunition magazine for an AR-15
2 semiautomatic rifle. The owner of Bestway Pawn Mart told me that I could not buy
3 such an ammunition magazine from him because he was prevented, as of July 1,
4 2022, by law from selling such 30 round ammunition magazines. I told him that I
5 believed that the "law" is unconstitutional and an affront to every free American. I
6 then left his business without being able to purchase the 30 round magazine.
7

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9 25. On July 1, 2022, I left Bestway Pawn Mart, Inc. and traveled immediately to "The
10 Range" located, and doing business, at 1701 Garretson Lane, Yakima, WA 98908.
11 The Range is a full service firearms facility serving Americans who exercise their
12 right to possess and use firearms. The Range has an indoor shooting range. I have
13 been a member of the Range for years and I am familiar with their services. I have
14 purchased firearms, ammunition, firearms parts and gunsmithing services from the
15 Range in the past. I have taken firearms safety classes at the Range. I have been a
16 speaker at the Range for events involving firearms laws. I have, on numerous
17 occasions, used the Range's indoor shooting range to shoot both handguns and rifles.
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21 26. I have personal knowledge that the Range has had, prior to July 1, 2022, ammunition
22 magazines for sale that held more than 10 rounds. On July 1, 2022, I entered the
23 Range to buy a 30 round ammunition magazine for an AR-15. I entered the gun store
24 portion of the Range and engaged Austin Harlan, the owner/manager of the Range
25 whom I have known for years. I told Austin I was there to buy a 30 round
26 ammunition magazine for an AR-15. He said he could not sell me such a magazine
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1 since it was, as of July 1, 2022, illegal for him to sell me such a magazine. Austin
2 indicated that he was now prohibited by law from selling me such a magazine. I
3 showed Austin my wallet with money sufficient to buy several 30 round magazines. I
4 told Austin I was ready, willing and able to purchase a 30 round ammunition
5 magazine for an AR-15 from him. He said he could not sell me such a magazine. I
6 left the Range and returned home.
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9 27. On July 9, 2022, I traveled to Selah, Washington and entered the business called
10 "Gimme Guns", a gun store located at 4 10th Avenue East, Selah, WA 98942. I met
11 the owner, a very courteous and knowledgeable person whom I asked if I could buy a
12 30 round ammunition for my AR-15. He said he could not sell me such a magazine
13 because the law in Washington as of July 1, 2022 prohibited him from selling me
14 such a magazine. I showed him my wallet and I said that I was ready, willing and
15 able to buy such a magazine. He refused since the law prevented such a transaction.
16 I told him I thought the law was unconstitutional because it impaired and/or infringed
17 upon my right to bear arms. I left Gimme Guns without purchasing the 30 round
18 magazine. I probably would have bought ten such magazines. Since Washington's
19 law prevented the sale of 30 round magazines, the owner of Gimme Guns lost the
20 opportunity to consummate a pretty nice little sale on a Saturday. This was a victory
21 for the gun-banners and a loss for patriotic, law-abiding citizens.
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26 28. I have had fairly extensive training and experience with firearms over my adult life.

27 After growing up, as many American boys and young men do, with firearms for
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1 hunting and sports shooting, I entered the US Army to be an armored crewman when
2 I turned 18. That is a military occupation that involved the regular use of a wide
3 variety of firearms, to include the M1911 .45 caliber semi-automatic pistol, the M3
4 “Grease Gun” fully automatic submachine gun chambered in .45 caliber fitted with
5 30 round magazines, the M16 battle rifle chambered in 5.56mm/.223 caliber and
6 fitted with 10, 15, 20 and 30 round magazines, the M240, fully automatic, belt-fed,
7 7.62mm machine gun, the M2, .50 caliber, belt-fed, heavy barrel machine gun, the
8 M73/M219, 7.62mm, belt-fed machine gun, the M9 semiautomatic pistol chambered
9 in 9mm, and the 105mm and 120mm main guns of the M60 and M1 series tanks.
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13 29. I served as a US Army active duty and Washington Army National Guard “tanker”
14 for approximately 10 years. As a soldier, Non-Commissioned Officer, gunner and
15 tank commander with the US Army’s 3rd Infantry Division and 4th Infantry Division
16 and the 81st Brigade (Enhanced) of the WAANG, not only did I regularly use these
17 firearms/weapons systems, but I also regularly trained soldiers with regard to their
18 use and maintenance. I participated in setting up ranges for soldiers to shoot these
19 weapons as well. As a tank commander, I trained my crewmen on the use of a variety
20 of heavy weapons systems as well as personal defense weapons.
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23 30. I have possessed and owned a variety of firearms as an American citizen. The right
24 to bear arms is not given to us by the US and Washington Constitutions, but rather is
25 a right PROTECTED BY those constitutions.
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1 31. I have, for well over 30 years, owned 10, 15, 20 and 30 round ammunition magazines
2 fitted for my firearms. Never once did any of those magazines give me, or anyone
3 else, trouble or hurt anyone of their own accord. My fellow soldiers, marines, sailors,
4 airmen, and coasties who I know and who have owned ammunition magazines of
5 capacities greater than 10 rounds for years and decades have not, to my knowledge,
6 ever committed a crime using one of those magazines. Yet each of us is no longer
7 permitted or allowed to purchase an ammunition magazine in the state of
8 Washington. We're treated like criminals even though we honorably served, and
9 were trusted by, our country for years. This is a slap in the face to all veterans who
10 believe in the right to bear arms.
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14 32. We who served our republic and states in the military are now treated as children by
15 some persons in state and federal government who have forgotten they are to protect
16 our liberties, not take, impair or infringe upon them. Ammunition magazines in
17 common use by civilians and retired/former military and/or law enforcement for
18 decades are now unavailable for purchase in Washington.
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21 33. This change in the law regarding ammunition magazines, while a clear impairment
22 and/or infringement, is also a decree by oath-breakers in government operating under
23 the guise and color of law that I and my fellow citizens are not to be trusted; that
24 because criminals commit crimes, we the law-abiding are to be punished for their
25 acts; and that my and my fellow citizens' right to bear arms is not in fact a right, but
26 rather is a petty privileged to be removed, modified, impaired and/or infringed at the
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1 whim of “important” and powerful people in office. This is precisely what our
2 Founders feared and the reason for our Constitutions. This abuse of power by
3 wayward office holders is the very same sort of dishonorable and underhanded
4 behavior that compelled our American ancestors to resist England’s tyranny.
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7 34. WA Attorney General Bob Ferguson, along with some others in public office either in
8 the executive, legislative and/or judicial branches of Washington state government,
9 are engaged in a well-orchestrated effort/campaign to incrementally impair our right
10 to bear arms.
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13 35. Ferguson and his allies are engaged in a coordinated effort to undermine my ability to
14 possess and/or purchase and/or transfer certain firearms, such as requiring onerous
15 “safe storage” laws, mandating certification to purchase a semiautomatic rifles such
16 as a .22 caliber rifle that has been used by youngsters for nearly a century, firearm
17 registration with the state, the disclosure of private health information to public
18 authorities, or the outright ban of certain rifles by adults under the age of 21 years.
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21 36. Ferguson has been instrumental in the redefinition of firearms and firearms
22 accessories in a coordinated, but incremental, campaign to ban, impair and/or infringe
23 upon Washingtonians rights to bear arms as protected by the Washington and US
24 Constitutions. Ferguson has helped define certain semiauto rifles as “assault
25 weapons” or certain ammunition magazines as “large capacity” magazines when such
26 labels are intended to scare people and sway public opinion to optimize his political
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1 advantages to ultimately disarm Washington's citizens or run those who do firearms
2 business out of Washington. This is a great offense and dishonor to those who have
3 served our great country and the great state of Washington. Ferguson, simply put, is
4 taking away our liberties and rights given to us by God.
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7 37. Ferguson, as Washington's Attorney General in the executive branch, was
8 instrumental in proposing and passing legislation (I-1639) that created statutory law
9 impairing/infringing upon the right of citizens in this state to keep, bear, possess,
10 purchase and/or transfer firearms and firearms accessories. Ferguson was so
11 intimately involved in the I-1639 initiative process that he was forced to recuse
12 himself due to a conflict of interest from his duties as WA Attorney General.¹
13 Ferguson, along with WA Governor Inslee, called for a ban on semiauto rifles
14 (Ferguson calls them "assault weapons") and ammunition magazines over 10 rounds.²
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18 38. As a US Army Reserve Judge Advocate General Officer (ie., Army lawyer), I was
19 assigned to the United States Northern Command (USNORTHCOM) at Peterson
20 AFB in Colorado Springs, CO. USNORTHCOM is an active duty unit that provides
21 homeland defense/homeland security for the United States.
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27 ¹ <https://www.nwpb.org/2018/04/23/in-unusual-move-washington-attorney-general-endorses-gun-related-ballot-measure/>

28 ² <https://www.atg.wa.gov/news/news-releases/inslee-ferguson-legislature-it-s-time-limit-high-capacity-magazines-stop-selling>

1 39. I served with the headquarters element of USNORTHCOM for several years as a
2 “domestic operations” attorney. My duties involved being part of a command legal
3 staff charged with advising the commander of NORAD/USNORTHCOM related to
4 matters affecting homeland security and homeland defense. As part of the Office of
5 the Staff Judge Advocate General’s office that advised this 4 star command, my
6 duties involved matters related to constitutional, statutory and case law in the United
7 States as it affected domestic matters, such as in times of insurrections, natural
8 disasters and/or foreign invasion.
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12 40. As a US Army Reserve “domestic operations” JAG attorney, I also performed duties
13 on behalf of USNORTHCOM at various locations around the United States. I was
14 trained to be a legal advisor for a “dual status commander” who commanded state and
15 federal military assets during a time of national/state emergencies, disasters and/or
16 threats to the homeland.
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19 41. The dual status commander takes charge of emergency operations in a
20 state/region/zone afflicted by disaster and interacts/coordinates with state governors,
21 their staffs, their military departments and a full range of civilian emergency
22 management assets. My task and duty was to provide legal advice to the dual status
23 commander during all phases of his command activities. Legal issues may involve
24 search and rescue, route clearance, surveillance issues, criminal justice, rules of
25 engagement, defense of federal and state critical infrastructure, mortuary affairs, civil
26 unrest and use of force.
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2 42. As a US Army Reserve JAG officer imbedded with an active duty federal military
3 unit (USNORTHCOM) tasked with homeland defense/security, I was expected to
4 know applicable state and federal laws in the discharge of my duties to ably advise
5 the dual status commander in a very dynamic and complex legal and disaster
6 environment. I interacted and worked with comms assets, law enforcement (both
7 civilian and military, state, local and federal), medical personnel, mortuary affairs
8 personnel (both civilian and military), criminal justice assets (both civilian and
9 military), US Air Force airborne surveillance assets/platforms, and Nuclear,
10 Biological and Chemical (NBC) personnel/equipment assets.
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14 43. Most of my legal work in this capacity was unclassified, but some work involved
15 access to or use/dissemination of classified information. I was required to have and
16 maintain a Top Secret-SCI security clearance to be a domestic operations attorney
17 with USNORTHCOM.
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20 44. I was involved, on occasion, with legal reviews associated with potential domestic
21 surveillance by DoD assets during disaster operations, an area that involved
22 constitutional law issues at both the state and federal levels.³ Military surveillance
23 assets are useful for search and rescue and/or situational awareness functions during a
24 disaster, but can also involve constitutional questions that may, for example,
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³ <https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=2559&context=lawreview>
AFFIDAVIT OF MICHAEL SCOTT BRUMBACK - 14

1 implicate the US Constitution's 4th Amendment. Likewise, other constitutional issues
2 were before me in my role of advising the dual status commander, such as
3 constitutional issues dealing with the 2nd Amendment and Washington and Idaho
4 constitutional law.
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7 45. Washington state has had concerns, for many years, that a natural disaster is possible
8 (and perhaps maybe even likely in the relative near future) in the form of a strong
9 earthquake in an area along the western side of Washington state known as the
10 "Cascadia Subduction Zone". Washington state has engaged in training with federal
11 entities such as FEMA, DHS and the DoD to prepare for such an event. This event
12 implicated a myriad of legal issues. It was my job as a JAG officer, to advise and
13 assist the dual status commander (typically a 1 star General Officer) in conducting
14 operations. If the Cascadia Subduction Zone event were to happen, the common
15 refrain amongst those who worked the exercises (I worked three different years of
16 exercises advising the dual status commander) was that western Washington would
17 be heavily impacted, with critical infrastructure and public services, roads, bridges,
18 hospitals, airfields, ports, etc., potentially out of commission for weeks, if not months.
19 Citizens would be, to varying degrees, on their own. Medical and law enforcement
20 services would be severely impaired if not gone for a protracted period of time, thus
21 putting citizens in a position of vulnerability. Law enforcement, critical
22 infrastructure, and medical personnel, for example, would be impacted by the event
23 directly and unlikely to respond immediately due to infrastructure obstacles or even
24 due to their own family emergencies.
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2 46. An anticipated potential consequence of the Cascadia Subduction Zone earthquake
3 that was trained for by state, federal, local and tribal interests was that citizens would
4 be, depending on the area in which they lived during and after the earthquake, "on
5 their own" to varying degrees and thus responsible for their own food, water, waste,
6 medical and personal security needs for days, weeks and even months. This is one
7 reason why citizens are admonished to keep emergency provisions on hand.
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10 47. Since the earthquake/disaster event could happen day or night at any time during the
11 course of the year (ie., during inclement weather that impacted the ability of
12 government and civilian resources to traverse, eg., the mountains) and would likely
13 involve a fairly large number of people away from their homes and hometowns,
14 refugees (ie., displaced persons) would be of great concern as well. Communications,
15 at least locally, are anticipated to be heavily impacted, both for civilians and
16 governmental entities alike.
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20 48. Should a severe disaster event occur with widespread impacts on government services
21 and critical infrastructure, federal resources are trained and prepared to respond
22 immediately to render aid. In fact, the term "immediate response authority" is a term
23 with legal implications. Training for these events by tribal, local, state and federal
24 forces occurs frequently all across the United States and also involves coordination
25 with foreign allies for support. My role in all this was as part of the DoD response,
26 with an eye on the process, for example, from the governor of the state of Washington
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1 (with advice and input from the WA State Attorney General's office) through FEMA
2 to the Secretary of Defense and the President of the United States and then back again
3 in the form of Defense Support to Civil Authorities (DSCA).
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6 49. The three different years I worked on behalf the DoD and interfaced with the
7 Washington government, to include the Washington Army National Guard, the WA
8 Air National Guard, law enforcement, US military assets, US federal civilian assets, I
9 was aware that the Washington Governor Jay Inslee and the Washington Attorney
10 General were, to varying degrees, apprised of the nature and extent of the disaster
11 planning, to include the potential for widespread devastation and follow on effects
12 therefrom.
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15 50. As the top law enforcement officer in the state of Washington (Ferguson has referred
16 to himself as such), WA Attorney General Ferguson was made aware, either directly
17 or indirectly through staff briefings, of the potential for criminal activity in the
18 afflicted areas where law enforcement was degraded due to the effects of the
19 earthquake. The training attended by state, federal, local and/or tribal government
20 officials for the Cascadia Subduction Zone event involved, in various training
21 scenarios where gangs and/or criminal elements may take advantage of the absence
22 and/or disability of law enforcement and prey on citizens and/or displaced person
23 trying to deal with the effects of the devastation. Gangs, organized criminals and/or
24 roving criminals are known to have access to various illegal weapons, such as fully
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1 automatic weapons, 30 round (or greater) ammunition magazines and a range of
2 weaponry that would pose a significant danger, potentially, to the public.
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5 51. Governor Inslee, his staff and Attorney General Ferguson, and his staff, were made
6 aware, either directly or indirectly, of the potential for criminal activity in the
7 afflicted areas. Sheriffs of many Washington counties participated in the training
8 over several years and were also aware of the dangers of criminal activity in the
9 afflicted areas. Moreover, given the need for additional manpower in the afflicted
10 areas, counties not directly impacted by the effects of the earthquake would
11 nonetheless be called upon to provide mutual assistance to the afflicted areas, to
12 include providing manpower resources.
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15 52. My role, in part, was to advise the dual status commander and his subordinates with
16 respect to legal implications involved with various legal and humanitarian issues
17 involved in the disaster planning. One of the aspects that I worked on not only in
18 Washington state, but also as the legal advisor to the dual status commander in Idaho
19 for the same exercise. It was anticipated that a large amount of displaced persons
20 would migrate across the Cascade Mountains towards Idaho, with many stopping,
21 resting and/or receiving aid in Yakima, Wenatchee, Moses Lake, the Tri-Cities,
22 Spokane and many other towns along the way towards northern Idaho (mostly Coeur
23 D'Alene) or southeasterly towards Boise (where I was based and advising the dual
24 status commander at Gowen Field just outside of Boise). A legal issue that was
25 present involved the status of displaced persons who would migrate with firearms in
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1 their possession in order to protect their families and selves on their trek eastward
2 toward safety and help. My position was two-fold, that first, of course they would
3 have arms to protect themselves and their families, and that second, they enjoyed
4 protections of their rights to bear arms by the US, Washington and Idaho
5 Constitutions.
6

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8 53. Times of emergency do not terminate or suspend our constitutions. In fact, this is
9 when they are needed most to ensure that people in positions of power do not abuse
10 that power under the guise of emergency powers.
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13 54. Washington's Article I, Section 24 individual right to bear arms and the US
14 Constitutions individual right to keep and bear arms was and were fully viable and in
15 effect even during a disaster or emergency event, whether in training or in an actual
16 disaster.
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19 55. My advice as an Army JAG domestic operations attorney to protect and support the
20 constitutional rights to bear arms was consistent with my NORTHCOM training and
21 experience that the constitutional rights of displaced persons, to include the right to
22 bear arms, would be protected by federal forces operating in the area. I was tasked
23 with researching and advising on this issue and others related to civil liberties during
24 the disaster. WA Attorney General Ferguson and Governor Inslee were kept apprised
25 of these issues from my vantage point at Camp Murray, the headquarters of the
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1 disaster response command structure in Washington state, to include interactions with
2 the WA state governor's and attorney general's office personnel.
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5 56. It is my sincere professional opinion based on my rather unique position of being a
6 legal advisor to a dual status commander with command responsibilities in the state
7 of Washington and/or Idaho that included constant communications with the WA
8 governor's office (Inslee) and WA Attorney General's office (Ferguson) during the
9 course of several disaster exercises related to the Cascadia Rising and/or Cascadia
10 Subduction Zone event, that the potential for criminal activity occurring at high levels
11 during the disaster aftermath is great, and that such criminal activity may likely
12 involve criminals armed with semiautomatic and/or fully automatic weapons with
13 ammunition magazine capacities over 10 rounds.
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17 57. If Washington citizens may now only purchase ammunition magazines with 10
18 rounds or less capacity, this puts the Washington citizens at a distinct disadvantage in
19 relation to criminal elements during a disaster/emergency event and does, in fact,
20 "impair" their right to defend themselves, and the state, from danger.
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23 58. On 31 January 2017, I was awarded the Defense Meritorious Service Medal for
24 service that was, in part, related to my legal services rendered to dual status
25 commanders as part of the above-described exercises. The citation reads as follows:
26 "Major Michael S. Brumback, United States Army Reserve, distinguished himself by
27 exceptionally meritorious service as Domestic Operations Legal Advisor,
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1 Headquarters, North American Aerospace Defense Command and United States
2 Northern Command, Peterson Air Force Base, Colorado from May 2014 to October
3 2016. During this period, Major Brumback's outstanding leadership, professional
4 skill, and ceaseless efforts resulted in major contributions to the success of the
5 command's missions. He authored a Threat Level Matrix for use by Judge Advocate
6 staff and other members of the Commands, refining it over the years to meet
7 emerging threats. In 2016, Major Brumback served as legal advisor to the Idaho
8 National Guard Dual Status Commander during ARNDENT SENTRY exercise,
9 EVERGREEN TREMOR, and as part of J36 while providing vital legal advice in
10 educating Idaho National Guard troops and enhancing their Domestic Operations
11 experience. His skillful efforts as legal advisor in the Future Operations Center
12 flawlessly supported multiple exercises and real-world events. The distinctive
13 accomplishments of Major Brumback reflect great credit upon himself, the United
14 States Army, and the Department of Defense."

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19 59. The above Defense Meritorious Service Medal was issued by the office of the United
20 States Secretary of Defense. I include it here to simply to lay the foundation that I
21 have been intimately involved with a wide variety of legal issues involving
22 constitutional questions that also relate to ESSB 5078's magazine
23 sale/distribution/manufacture/import ban. My legal experience bears directly upon
24 questions related to whether this ban passes constitutional muster. It does not, in my
25 opinion, and is clearly, on its face, an unconstitutional "law".
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1 60. When I trained the Idaho National Guard, they had not been intensely involved in
2 domestic operations before and had instead fairly recently been deployed overseas in
3 combat operations. My training objectives for the Idaho Army National Guard was to
4 build their skillsets with regard to dealing with emergencies within the United States
5 which of course involves a completely different mindset than that of a soldier
6 overseas engaged in combat operations since we are dealing with American citizens
7 on American soil. As a result, the implications of operations in the "homeland"
8 necessarily involved considerations of US and state constitution and statutory law.
9 An aspect of those considerations that I personally dealt with in several ways
10 involved the right to bear arms, both as protected by the US Constitution, Washington
11 Constitution and Idaho Constitution. In other words, soldiers overseas in a combat
12 operations environment operate with certain "rules of engagement" and "rules for the
13 use of force". Domestically, people may be surprised to learn that military forces, in
14 a disaster area/zone where civil authorities are degraded or maybe non-existent, enter
15 that area/zone with "rules of engagement" and "rules for the use of force". I know,
16 because I drafted them and/or was involved in their drafting for use by federal and
17 state military forces tasked with operating in Washington and Idaho.
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23 61. In addition to the above Defense Meritorious Service Medal, I have been awarded
24 two other Meritorious Service Medals as well as seven Army Commendation Medals
25 and other awards and medals. I have graduated from the United States Army
26 Domestic Operations course held at the University Virginia and the United States
27 Army JAG School in Charlottesville, VA. I have years of experience as a domestic
28

1 operations attorney serving with various units in the US. I have been recognized by
2 the Department of the Army and the Judge Advocate General, US Army Major
3 General Walter B. Huffman for my contribution to "The Lautenberg All-States Guide
4 Database" dealing with federal and Washington state firearms laws in 1998 and was
5 awarded an Army Commendation Medal as a result. General Huffman referenced
6 that the publication was in "world-wide use by Army legal assistance attorneys" for
7 reference to firearms related inquiries. I am an honor graduate of two Non-
8 Commissioned Officer academies (3rd and 4th Infantry Divisions).
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12 62. Again, I familiar with the types and general prevalence of firearms and their
13 accessories in common use within the United States and with the US population in
14 general since I not only have civilian experiences of living in various states, but I also
15 have military experience living in various states and being stationed around the US.
16 For example, the AR-15 exists and is used by citizens in every state of the union, and
17 ammunition magazines that are designed to be fitted into the AR-15 number in the
18 hundreds of millions. I also have knowledge about the extent to which the AR-15 and
19 other semiautomatic rifle/pistol platforms exist in the US, Washington and Idaho
20 because that was part of my training in the above-described military exercises.
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24 63. The "Threat Level Matrix" referenced in the above MSM citation above and that I
25 authored is in use by NORAD and USNORTHERNCOM (and probably other
26 commands). It was the result of extensive research into the sources of legal and
27 operational authorities of NORAD and USNORTHCOM and involved an
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1 understanding and depiction of a wide range of threats to US forces operating in the
2 homeland AO. Constitutional considerations were a part of my research and advice
3 to the command with respect to this matrix.
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6 64. I believe the Washington state legislature, with the passing/signing of ESSB 5078 and
7 its amendments to RCW Chapter 9.41, overstepped constitutionally-mandated bounds
8 under the Washington and US Constitutions related to the right to bear arms.
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11 65. In addition to the concrete examples of why citizens need to have access to
12 ammunition magazines greater than 10 rounds as recited above with regard to disaster
13 scenarios, there are countless other examples where limiting a citizen to a 10 round
14 ammunition magazine could endanger his or her life or their loved ones' lives, such
15 as if multiple persons acted to do harm to the person exercising their right to bear
16 arms in defense of themselves and/or family.
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19 66. An easy and simple way to see the impairment that Inslee, Ferguson and ESSB 5078
20 have burdened Washington citizens' right to bear arms, consider this: If a criminal
21 (who does not btw obey the law) has a semiauto rifle fitted with a 30 round
22 ammunition magazine and acts to harm a law-abiding citizen armed with the same
23 rifle (that Ferguson/Inslee/Biden intend to ban btw) but who only has a 5 or 10 round
24 ammunition magazine, who has the advantage? Clearly the criminal has the
25 advantage and the citizen is in greater danger of death or serious injury.
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1 67. Governor Inslee, AG Ferguson and the Democrat controlled legislature involved with
2 the passage of ESSB 5078 have thereby endangered the lives and welfare of the
3 people of the state of Washington. And given their knowledge of emergency
4 scenarios such as with the Cascadia Subduction Zone and the likelihood of danger to
5 the public by roving criminal elements, their actions that endanger the citizens of
6 Washington are done knowingly.
7

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9 68. Article I, Section 1 provides that not only is all political power inherent in the People,
10 but government's job is to "**protect and maintain individual rights**"⁴. We know
11 that the Article I, Section 24 right to bear arms is an individual right because it says
12 so explicitly. And we know, by virtue of Article I, Section 29 of the Washington
13 Constitution, these provisions are "mandatory". Government, therefore, is not
14 instituted in order to control, monitor or regulate us, rather, it is instituted to protect
15 our liberties.
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19 69. As time passed, government has reversed this concept to not protect our liberties so
20 much as to control us and convert our rights into privileges. Rights cannot be taken
21 away. Privileges can. This distinction is missed by those who have forgotten liberty.
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27 ⁴ ARTICLE I DECLARATION OF RIGHTS Article I Section 1 SECTION 1 POLITICAL
28 POWER. All political power is inherent in the people, and governments derive their just powers from the consent of
the governed, and are established to protect and maintain individual rights.
AFFIDAVIT OF MICHAEL SCOTT BRUMBACK - 25

1 70. Is ESSB 5078 a law that protects and maintains our/my individual rights, or does it
2 lessen, reduce, weaken, restrict or narrow my rights? Clearly, on its face, this law's
3 only result is to remove and/or impair my right to bear arms.
4

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6 71. A person with even limited firearms experience can figure out that only 10 rounds in
7 a tense situation with one or more assailants could result in multiple shots fired with
8 some or all shots being misses on the intended target. As a result, a reload of the rifle
9 through a change of magazines while under duress is needed in order to survive. This
10 maneuver requires skill and training and involves the use of valuable time that may
11 mean the difference between life or death. Under pressure, accuracy wanes, confusion
12 happens. A 30 round magazine, for example, would extend the ability of a law-
13 abiding citizen to keep shooting and also lessen the need for a magazine change
14 during a tense encounter. In other words, a 30 round magazine, as opposed to a 10
15 round (or less) magazine greatly enhances a citizen's chances of survival in a gun
16 fight.
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20 72. Presently, the United States has over 400 million firearms, with about 20 million of
21 those being AR-15's.⁵ At least 150 million pistol and rifle ammunition magazines
22 exist that can hold over 10 rounds of ammunition.⁶ That data confirms that semiauto
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28 ⁵ <https://www.guns.com/news/2020/11/17/data-us-has-434-million-guns-20m-ars-150m-mags>

⁶ Id.

1 rifles like the AR-15 and magazines over 10 rounds are in “common use” in the US,
2 including Washington state.

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4 73. WA Governor Inslee, WA Attorney General and the Washington legislature, by and
5 through ESSB 5078 as signed into law and amending RCW Chapter 9.41, has
6 impaired my constitutionally-protected right to bear arms as found in Article I,
7 Section 24 since I cannot now, as of July 1, 2022, purchase from Washington
8 firearms dealers, ammunition magazine over 10 rounds. My right to bear arms is
9 weaker, less, reduced and/or restricted than it was as of June 30, 2022 (and before),
10 and thus my right to bear arms has been “impaired” in clear violation of Article I,
11 Section 24.
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15 74. As a result of the foregoing, ESSB 5078, and changes/amendments to RCW Chapter
16 9.41 that resulted therefrom, should be declared null, void and of no legal effect since
17 ESSB 5078 violates Article I, Section 24 of the Washington Constitution.
18 Furthermore, the Court should enjoin the implementation of ESSB 5078 and its
19 effects on RCW Chapter 9.41 as it relates to limiting ammunition magazines to a
20 capacity of 10 rounds or less in the state of Washington.
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25 **“Bad men need nothing more to compass their ends, than that good men should look**
26 **on and do nothing.”** John Stuart Mill, Inaugural Address Delivered to the University of St Andrews,

27 2/1/1867
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3 Made under penalty of perjury under the laws of the State of Washington. Signed in
4 Yakima, Washington this 13 day of July, 2022.
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9 Michael Scott Brumback, Citizen
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